

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company d/b/a Nicor)	
Gas Company)	Docket No. 12-0569
)	
)	
Proposed Establishment of Rider 17 Purchase)	
of Receivables with Consolidated Billing)	

**REPLY BRIEF ON EXCEPTIONS OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 200.830 of the Illinois Commerce Commission’s (“Commission” or “ICC”) Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions in the above-captioned matter.

I. INTRODUCTION

On September 5, 2012, Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor” or the “Company”) filed a new tariff Rider 17, which was a Purchase of Receivables with Consolidated Billing. On October 17, 2012, the Commission suspended Rider 17 pending investigation and a Commission decision. On January 24, 2013, the Commission re-suspended Rider 17.

The following parties petitioned for, and were granted, leave to intervene in this proceeding: Retail Energy Supply Association (“RESA”); Interstate Gas Supply Of Illinois, Inc. (“IGS”); Citizens Utility Board (“CUB”); the Illinois Attorney General on Behalf of the People of Illinois (“AG”); and the Illinois Competitive Energy Association

("ICEA"). On December 12, 2012, the Company filed direct testimony in support of the Rider 17 tariff. On March 1, 2013, Staff, CUB/AG, and RESA/IGS filed direct testimony. On March 25, 2013, the Company filed rebuttal testimony. On April 23, 2013, Staff, CUB/AG, and RESA/IGS filed rebuttal testimony. On April 30, 2013, the Company filed surrebuttal testimony. An evidentiary hearing was held on May 6, 2013. On May 17, 2013, Staff,¹ CUB,² RESA, and Nicor filed their respective Initial Briefs ("IB"). On May 24, 2013, the parties filed Reply Briefs ("RB"). The ALJ served a Proposed Order ("ALJPO") on the parties on June 12, 2013. Nicor and RESA/IGS filed Briefs on Exception ("BOE") on June 21, 2013. This Reply to Exceptions follows.

II. ARGUMENT

A. Just and Reasonable Standard

Nicor and RESA/IGS argue that the ALJPO and Staff, in finding that Rider 17 is unjust and unreasonable, are using a legal standard that does not exist. They contend that applying a cost-benefit analysis is wrong as a matter of law and that the only standard that can be applied is the just and reasonable standard. See RESA/IGS BOE at 2-4; Nicor BOE at 2-7. This position is absurd on its face. The just and reasonable standard does not preclude an underlying analysis. The Commission is not barred as a matter of law from using logic and analysis in reaching a just and reasonable determination. To think otherwise requires that just and reasonable must be divorced from all logic or rational thought. Further, neither Nicor nor RESA/IGS provide the

¹ Staff filed a Revised Initial Brief on May 20, 2013, which included in an Appendix Staff's suggested tariff language.

² CUB filed an errata to a Corrected Initial Brief on May 20, 2013, and Staff will refer to the Corrected IB of CUB throughout.

Commission, because they cannot, with any authority for their novel theory. The Commission should summarily dismiss this argument.

More specifically, under this unfounded theory, RESA/IGS and Nicor both believe that Rider 17 is just and reasonable *regardless* of its impact on consumers. See *e.g.*, Nicor BOE at 6 (“Nicor Gas is not in a position to assess whether, or to what extent, an optional service intended for Q-AGS and their customers will produce benefits.”). However, in order to reach a just and reasonable determination the Commission must analyze the impact upon consumers.

Illinois courts have long held that a determination of what is:

“[J]ust and reasonable” involves a balancing by the Commission of the interests of the utilities’ stockholders and the utilities’ consumers. [The courts have specifically noted that] “[t]he Commission cannot fulfill its statutory duty to balance the competing interests of stockholders and ratepayers *without taking into account the impact of proposed rates on ratepayers*.”

Abbott Laboratories v. Illinois Commerce Comm’n, 682 NE2d 340, 350 (Ill. App. Ct. 1st Dist. 1997)(internal citations omitted, emphasis added)(“Abbott”).

In other words, the courts explained that:

A determination of what is ‘just and reasonable’ involves a balancing by the Commission of the interests of the utilities’ stockholders and the utilities’ consumers. The Commission *cannot fulfill its statutory duty* to balance the competing interests of stockholders and ratepayers *without taking into account the impact of proposed rates on ratepayers*.

Citizens Utility Board v. Illinois Commerce Comm’n, 658 N.E.2d 1194, 1201 (Ill. App. Ct. 1st Dist. 1995)(internal citations omitted, emphasis added)(“CUB”).

Staff’s cost-benefit analysis does no more than what the courts have mandated that the Commission *must do*; which is to take into account the impact of this proposed

rider on consumers. Despite the alarmist rhetoric of RESA/IGS and Nicor, all that Staff's analysis does is to logically determine whether the proposed Rider 17 benefits consumers. If the costs to consumers from the Proposed Rider 17 are less than the benefits to consumers, then consumers will benefit and Staff would recommend that the Commission implement Rider 17 as just and reasonable. However, there is absolutely nothing to base that just and reasonable standard on. RESA/IGS and Nicor presented no evidence to support such a conclusion. Moreover, along these same lines, the courts concluded that:

Where the utility has presented no evidence concerning the impact of rate restructuring on ratepayers, it has not met its burden of proving the restructuring just and reasonable for those ratepayers.

Id.

Consequently, even if Staff were inclined to support a gas PORCB program as a matter of policy, the proposed Rider 17 falls far short of the vehicle necessary to implement a gas PORCB under Section 9-201 of the Act.

Ironically, while RESA/IGS contends that just and reasonable cannot withstand any underlying analysis, it simultaneously expends considerable effort trying to convince the Commission that Rider 17 holds net benefits for customers. Its arguments, however, are entirely theoretical. RESA/IGS does offer examples of *potential* benefits. RESA/IGS BOE at 4-5. Yet it fails to assign a value to any of those examples. Nonetheless, without any support, RESA/IGS claim "that in a competitive natural gas market AGS will have to reduce prices if they wish to remain competitive with other suppliers." *Id.*, at 8. It further argues that "while it is not possible to quantify the benefits to customers of Rider 17, RESA/IGS did offer empirical evidence...that there is good reason to believe that the benefits of Rider 17 will be greater than the costs."

RESA/IGS BOE at 6. However, “it is simply not possible to quantify to what extent prices will decrease.” RESA/IGS BOE at 7. Thus, by their own words they speculate that Rider 17 “could,” or “should,” or “would have,” benefitted consumers *if* only Nicor and/or RESA/IGS had offered any “real” empirical evidence.

RESA/IGS as well as Nicor also contend that Rider 17 imposes costs on suppliers not customers. RESA/IGS BOE at 3. However, as RESA/IGS argue in their testimony, cost changes to suppliers are passed along to their customers. Staff Initial Brief at 8-9.

Intangible Costs

Staff has addressed the issue of intangible costs in great detail in its briefs. Staff Initial Brief, at 12-13. However, Nicor in its BOE makes what may be a new argument, which is that intangible cost recovery, as proposed, are “an important component of the risk/reward structure.” Nicor BOE, at 8. In other words, Nicor appears to want the chance to recover revenues greater than its costs in order to provide POR services. See Staff Initial Brief, at 10-11. Such over-recovery, however, is clearly unlawful.

For example, in CUB the court concluded that: “[A] just and reasonable rate must be less than the value of the service to consumers.” *CUB*, 658 N.E.2d at 1200. The court explained that:

The Commission has the responsibility of balancing the right of the utility’s investors to a fair rate of return against the right of the public that it pay no more than the reasonable value of the utility’s services. While the rates allowed can never be so low as to be confiscatory, within this outer boundary, if the rightful expectations of the investor are not compatible with those of the consuming public, it is the latter which must prevail.

Id.

Accordingly, the intangible cost recovery, as proposed by Nicor, is unlawful even if part of an important component of the risk/reward structure under which Nicor proposed Rider 17.

B. Tariff Modifications - Reply to Nicor and RESA/GS

Although the ALJPO rightly rejects Nicor's Rider 17, the ALJPO does not discuss Staff's recommended tariff changes in detail. ALJPO, pp. 7, 19. Staff wishes to emphasize that should the Commission determine that Rider 17 is just and reasonable and approves the Rider, Staff's modifications should be incorporated. Staff IB, Appendix A.

RESA/IGS states that all of Staff's proposed modifications to Rider 17 should be rejected, except those agreed to by Nicor witness Robert Mudra in Rebuttal Testimony. RESA/IGS BOE, p. 9. Since RESA/IGS offers no argument supporting this statement beyond the parties Reply Briefs which the ALJ already considered, it should be given no weight by the Commission.

Nicor does not address Staff witness Ebrey's proposed tariff modifications in its BOE; however, Nicor included modifications in its exceptions. (Nicor BOE, Exhibit A, p. 19) Nicor amends the ALJPO so that it would state:

Because the Commission adopts Nicor's suggested Rider 17, we need not address arguments regarding Staff's or AG/CUB's recommended modifications, to the Rider 17 tariff design beyond the discussion below regarding intangible cost recovery and the discount factor. *Id.*

Many of Staff witness Ebrey's proposed tariff modifications were not modifications solely to the discount factor or intangible costs. Specifically, language in

the definitions sections, Administrative and Operative Costs, Capital Recovery Costs, Qualifying Receivables and other adjustments were proposed by Staff. Nicor does not explain in its BOE why those modifications should not be made, should the Commission approve Rider 17. Therefore, if the Commission approves Rider 17, Staff's tariff modifications as presented in Staff's Initial Brief Appendix A should be incorporated.

III. CONCLUSION

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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